Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a	)	
Review of the Equal Access and	)	CC Docket No. 02-39
Nondiscrimination Obligations	)	
Applicable to Local Exchange Carriers	)	

REPLY COMMENTS OF VERIZON WIRELESS

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Verizon Wireless hereby submits reply comments on the *Notice of Inquiry* ("*Notice*")[1] in the captioned proceeding. Verizon Wireless limits its response to the comments of certain parties that urge the Commission to impose equal access obligations on wireless carriers.

BACKGROUND AND SUMMARY

Section 251(g) of Communications Act of 1934, as amended (the "Act"), explicitly preserves the equal access and nondiscrimination requirements applied to local exchange carriers "until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission."[2] Recognizing that Congress expected the Commission to "identify those parts of the interim restrictions and obligations that it is superseding so that there is no confusion as to what restrictions and obligations remain in effect,"[3] the Commission initiated this proceeding to

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1 Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, *Notice of Inquiry*, CC Docket No. 02-39, FCC No. 02-57 (rel. Feb. 28, 2002).

2 47 U.S.C. § 251(g).

3 *Notice* ¶ 10 (citing S. Conf. Rep. 104-230, at 123 (1996)).

review the equal access and nondiscrimination obligations that currently apply to incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs").

Despite the fact that the Commission did not propose to examine the responsibilities of wireless carriers in this proceeding, a few parties offered comments related to the issue. For instance, Fred Williamson and Associates ("FW&A")[4] claims that the inability of CLEC and wireless customers to select the interexchange carrier of their choice on a 1+ basis is "at odds with a competitive market, hinders interexchange competition and results in anticompetitive discrimination by the CLEC or wireless carrier."[5] FW&A asked the Commission to remedy these alleged problems by revising its equal access rules to apply them equally to "all local exchange service providers—ILECs, BOCs, CLECs and wireless providers."[6] Another commenter urges the Commission to strive for regulatory parity in applying equal access regulations because, for example, "wireless carriers have a distinct competitive advantage in that they can compete directly against rural ILECs without incurring the additional cost of providing equal access."[7] The Commission must reject these arguments.

The Commission simply cannot impose equal access obligations on wireless carriers. The Commission's stated goal in this proceeding is to create a marketplace that is conducive to

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4 FW&A filed comments on behalf of several small ILECs, including Chouteau Telephone Company, H&B Telephone Communications, Inc., Moundridge Telephone Company, Inc., Pine Telephone Company, Inc., Pioneer Telephone Association, Inc., Totah Telephone Company, Inc., and Twin Valley Telephone, Inc.

5 FW&A at 3.

6 *Id.*

7 National Telecommunications Cooperative Association ("NTCA") at 2.

competition, deregulation, and innovation.[8] Congress has already determined that for wireless carriers, equal access obligations are unnecessary to promote competition and would be a costly diversion from providing innovative services to consumers. The Commission must therefore reject the arguments of those parties that would urge the FCC to impose equal access requirements on wireless carriers.

DISCUSSION

When Congress enacted the 1996 Telecommunications Act,[9] it amended Section 332 of the Act to make clear that wireless carriers cannot be mandated to provide equal access. Section 332(c)(8) provides:

> A [CMRS provider] shall not be required to provide equal access to common carriers for the provision of telephone toll services.

The plain language of Section 332(c)(8) reflects Congress's intent not to impose equal access requirements on wireless carriers. When Congress adopted Section 332(c)(8), it made clear that equal access requirements should not apply to wireless carriers because such requirements would inflate the cost of service.[10] As the Commission recognized when it

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8 *Notice* ¶ 2.

9 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

10 H.R. Rep. No. 204(I), 104th Cong., 1st Sess. (1995).

implemented the statute, it simply no longer has authority to require wireless carriers to implement equal access to toll providers.[11]

Section 251(g), enacted at the same time as Section 332(c)(8), has no bearing on this analysis. Congress adopted Section 251(g) to maintain the equal access and nondiscrimination obligations of local exchange carriers. As the Commission has determined in the local competition context, however, wireless carriers are not local exchange carriers,[12] making the requirements of Section 251(g) irrelevant and unrelated to equal access for CMRS providers.

Even if the Commission had the statutory authority to impose equal access obligations on wireless carriers, such a requirement is unnecessary and contrary to the public interest. As Congress recognized when it considered these requirements, the costs of equal access would greatly outweigh the benefits. Today wireless carriers are able to minimize the costs of providing toll services by aggregating most outgoing long distance traffic and thereby qualifying

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[11] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Order,* 11 FCC Rcd 12456, 12458 (1996). Section 332(c)(8) prohibits the Commission from imposing equal access. If there is evidence that wireless subscribers are being denied access to the toll providers of their choice, which does not exist on this record, then the Commission has the authority to examine whether to impose unblocked access requirements, not equal access. *Compare Id.* at 12457 n.2 (equal access has historically included "a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the '1+' form of access for presubscribed lines") *with id.* at 12458 n.12 (unblocked access is provided through 10XXX [or 1010XXX], 800, or 950 numbers).

[12] 47 U.S.C. § 153(26) of the Act defines a local exchange carriers as "any person that is engaged in the provision of telephone exchange service or exchange access," but "does not include a person insofar as such person is engaged in the provision of a commercial mobile radio service under Section 332(c)…, except to the extent that the Commission finds such service should be included in the definition of such terms." In implementing the 1996 Act, the Commission decided not to treat CMRS providers as LECs. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499, ¶ 1004 (1996) ("*Local Competition Order*").

for volume discounts from IXCs. Verizon Wireless passes these savings on to customers. Verizon Wireless offers innovative pricing plans that often make it more cost-effective for wireless customers to purchase a bundled plan that includes long distance than to purchase a plan without included minutes for long distance and use an alternative carrier for toll service. In addition, there are substantial implementation costs associated with equal access. Balloting costs alone would be extremely high.

Finally, regulatory parity is not a good reason to impose equal access on wireless carriers. The latest available Commission report indicates that 259 million Americans, or almost 91% of the U.S. population, have access to three or more different wireless carriers, over 214 million, or 75% of the U.S. population, live in areas with five or more mobile telephone operators, and 133 million, or 47% of the population can choose from at least six different wireless carriers.[13] These providers are all offering toll services. Clearly wireless carriers have no ability to engage in anticompetitive activities vis-à-vis the services of other wireless carriers because the competitive marketplace will discipline providers that engage in such behavior. To the extent the Commission finds it in the public interest to promote competition between LECs and CMRS providers, the Commission should consider reducing the equal access and nondiscrimination requirements of LECs rather than imposing such requirements on wireless carriers.

I. CONCLUSION

Based on the forgoing, Verizon Wireless urges the Commission not to impose costly and burdensome equal access obligations on wireless carriers.

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[13] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Sixth Report,* 16 FCC Rcd 13350, 13355 (2001).

Respectfully submitted,

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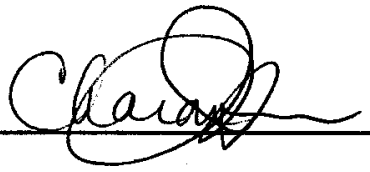
By: 

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